

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 91-451-W/S - ORDER NO. 92-1 ✓
JANUARY 6, 1992

IN RE: Application of Water Oak Utility Company,) ORDER
Inc. for Exemption from Regulation and,) GRANTING
Alternatively, for Approval of Transfer) EXEMPTION
in Stock Ownership.)

By Application filed July 31, 1991, Water Oak Utility Company, Inc. (Water Oak or the Applicant) seeks an exemption of its water and wastewater services from regulation by the Public Service Commission of South Carolina (the Commission). In the alternative, the Applicant seeks Commission approval to transfer its water and wastewater assets to Moss Creek Owners Association, Inc. (the Association). Moss Creek Owners Association, Inc. is a non-profit organization, and if the transfer is approved, and the Association is a qualified Homeowners Association, the Association would not be subject to the jurisdiction of the Commission. The Application was filed pursuant to R.103-502.2 and .3 and R.103-702.2 and .3 of the Commission's Rules of Practice and Procedure.

Subsequent to the initiation of this proceeding, the Executive Director of the Commission instructed the Applicant to cause to be published a prepared Notice of Filing in certain newspapers of general circulation in the affected area and to

furnish the same information to each customer. The Notice of Filing indicated the nature of the Application and advised all interested parties desiring to participate in the proceeding of the manner and time in which to file the appropriate pleadings. No Petitions to Intervene were filed. Two protests were filed, however, both were subsequently withdrawn.

The Applicant moves for a waiver of the public hearing, and also moves that the Application be approved by the Commission based upon the written documentation. The Commission grants these motions.

After a thorough consideration of the Application, the evidence and applicable law, the Commission makes the following findings of fact and conclusions of law:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Applicant provides water and wastewater services to approximately 520 customers, of which 12 are commercial customers, and the remainder are residential customers, in Moss Creek Plantation, Beaufort County, South Carolina.

2. Water Oak Utility Company, Inc. is wholly-owned by Moss Creek Owners Association Incorporated, which is a non-profit organization comprised of the residents of Moss Creek Plantation.

3. Pursuant to a stock offer agreement dated December 10, 1990, as attached to the Application, Moss Creek Owners Association, Incorporated purchased all common shares of stock in Full Circle Corporation of Moss Creek, the former owner of Water Oak Utility Company, Inc. As a result of such purchase, the

Association became the sole owner of the Applicant. The 9 persons serving on the Association's Board of Directors also constitute the Board of Directors for the Applicant. According to the Applicant, it is its intention and desire to continue to operate Applicant's water and sewer facilities. The Commission approves the transfer of common stock from Full Circle Corporation of Moss Creek to the Moss Creek Owners Association, Inc.

4. Although the 12 commercial customers served by the Applicant are not eligible to vote as members of the Association, all 12 commercial customers have consented to Applicant's exemption from regulation by the Commission, upon Applicant's agreement to charge commercial customers on a single family equivalent basis.

5. With regard to water service, Applicant provides water service only to customers located in Moss Creek Plantation. Accordingly, Applicant believes that under R.103-702.2 and .3, it does not constitute a "utility" subject to regulation by the Commission. Regulation 103-702.2 and .3 state that a "Homeowners Association" as defined in the rules and regulations and subject to the requirements set forth by Commission Order may be found not to be a "utility." Section 3.3 requires that a "Homeowners Association" must, prior to the commencement of operation of a water system, file with the Commission (a) a certified copy of its certificate of incorporation; (b) a copy of the corporation's bylaws; (c) a copy of any declaration of covenants, conditions, and restrictions of real property in the subdivision or

development filed in conjunction with the formation of the Homeowners Association; (d) a copy of the permit or authorization from the Department of Health and Environmental Control issued to the Homeowners Association to operate the utility; and (e) copies of a statement signed by each lot owner disclosing that the water service is in the subdivision provided by a non-profit Homeowners Association in which each lot owner is a voting member, and that an appropriate assessment to meet operating expenses of the utility must be paid by each lot owner.

6. We believe that Moss Creek Home Owners Association, Incorporated qualifies as a "Homeowners Association," as defined above. The Association has furnished all of the required information as listed above with the exception of the information listed in section (e), that is, copies of a disclosure statement signed by each lot owner. With regard to this statement, Applicant and the Association request, pursuant to R.103-701(3), that the Commission waive strict compliance with the requirement that the statement signed by each lot owner be submitted. This request is made because according to the Applicant, many of the lot owners are not permanent residents of Moss Creek Plantation, but reside throughout the United States, Canada, and foreign countries, and that obtaining statements from all lot owners would be virtually impossible, and would impose an undue hardship upon the Applicant and the Association. The Applicant maintains that such waiver is in the public interest. Pursuant to discussion with Staff, the Applicant and the Association mailed written

notice of proposed exemption from regulation to all lot owners. Considering the Applicant's willingness to mail written notices, and due to the fact that the Commission believes that each lot owner was therefore duly notified of potential exemption from Commission jurisdiction, we believe that the waiver of R.103-702.3(e) is in the public interest, and that this requirement should be waived.

7. With regard to wastewater service, Applicant provides such service on a wholesale basis to Beaufort-Jasper Water and Sewer Authority (the Authority) outside Moss Creek Plantation, and in addition, provides service to customers within Moss Creek Plantation.

8. As to the customers outside Moss Creek Plantation, we believe that S.C. Code Ann. §58-5-40(1976), as amended, applies. This section provides that any supply of water-borne waste disposal services to a municipality on a wholesale basis is not subject to the Commission's jurisdiction as to such services. The Applicant maintains that the Authority is a "municipality" within the meaning of this statutory provision, since it is a special purpose district. We agree, and hold that the Commission should not regulate provision of wastewater services by the Applicant outside Moss Creek Plantation.

9. As to wastewater service provided to customers within Moss Creek Plantation, the Applicant believes that under R.103-502.2 and .3, it does not constitute a "utility" subject to regulation by the Commission. Similar regulatory requirements for

a Homeowners Association to satisfy are found under R.105-502.3 as were found under 103-702.3. In addition, the Applicant and the Association again request exemption from subsection (e), which requires written consent of each lot owner for the same reasons as stated above. Once again, the Commission grants it, since written notice of the potential exemption from Commission jurisdiction was sent to all customers on the system.

10. It appears to this Commission that under R.103-502.2 and 103-702.2, that the Moss Creek Owners Association, Inc., which owns the Applicant, is not a "utility" with regard to water and wastewater services provided within Moss Creek Plantation. Since the Association owns all of the stock of the Applicant, it may be said that the Association and the Applicant are one and the same, and, therefore, we hold that the Applicant is not a "utility" with regard to water and wastewater services provided within Moss Creek Plantation. With regard to wastewater service provided to the Beaufort-Jasper Water Authority outside Moss Creek Plantation, it appears to this Commission that S.C. Code Ann. §58-5-40 exempts from Commission authority the provision of such wholesale wastewater services.

11. We believe that the Applicant should be exempt from our regulation under S.C. Code Ann. §58-3-140 for both water and wastewater service provided within Moss Creek Plantation since it is wholly-owned by a qualified Homeowners Association.

IT IS THEREFORE ORDERED:

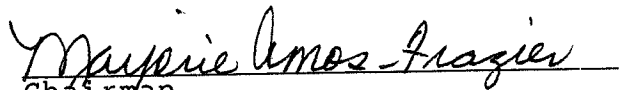
1. That the transfer of water and wastewater assets of the

Applicant to the Moss Creek Owners Association, Incorporated is approved.

2. That Water Oak Utility Company, Inc., which is wholly-owned by a qualified Homeowners Association, shall be exempt from regulation by this Commission as to its water and wastewater services.

3. That this Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)